

United States District Court
Central District of California

JANE DOE, as next friend for “JESSY,” a
minor, and “SOLOMON”
Plaintiff,
v.
EDWARD CHARLES DINKFELD,
Defendant.

Case No. 2:19-cv-01554-ODW (SSx)

**ORDER DENYING DEFENDANT’S
MOTION TO DISMISS [29]**

I. INTRODUCTION

Presently before the Court is Defendant’s Motion to Dismiss Plaintiffs’ Complaint. (Def.’s Mot. to Dismiss (“Mot.”), ECF No. 29-1.) For the reasons that follow, Defendant’s Motion is **DENIED**.¹

II. FACTUAL AN PROCEDURAL BACKGROUND

Minor, “Jessy,” proceeding by and through his next friend, Jane Doe, and “Solomon,” (collectively, “Plaintiffs”),² bring this action against Defendant Edward

¹ After carefully considering the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15.
² Jessy is currently a minor; Jane Doe is Jessy’s mother; and Solomon is now an adult male. (Compl. ¶¶ 3–5, ECF. No. 1)

1 Charles Dinkfeld (“Defendant”) as a result of Defendant’s possession and distribution
2 of child pornography depicting Jessy and Solomon. (Compl. ¶¶ 9–14.)

3 When Jessy was under the age of twelve, he met an adult male who
4 photographed Jessy, partially clothed and nude, on numerous occasions. (Compl. ¶ 9.)
5 When Solomon was a child, he was sexually abused by an adult male and this abuse
6 was photographed. (Compl. ¶ 12.) Images of both Jessy and Solomon were
7 distributed over the internet and constitute child pornography within the meaning of
8 18 U.S.C § 2256(8). (Compl. ¶¶ 10, 13.)

9 In a related criminal case, Defendant pleaded guilty to 18 U.S.C.
10 §§ 2252A(a)(5)(B), (b)(2), knowingly possessing material containing images of child
11 pornography depicting Plaintiffs. (Compl. ¶¶ 20–22.) Plaintiffs bring their claim
12 under 18 U.S.C. § 2255(a), which declares that “any person who, while a minor, was a
13 victim of a violation of . . . [§ 2252A] . . . and who suffers personal injury as a result
14 of such violation . . . shall recover the actual damages such person sustains or
15 liquidated damages in the amount of \$150,000.” (See Compl. ¶ 2.) Plaintiffs allege
16 that they have suffered personal injury as a result of Defendant’s violation of 18
17 U.S.C. §§ 2252A(a)(5)(B), (b)(2) and seek liquidated damages in the amount of
18 \$150,000 each. (Compl. ¶ 23.)

19 Defendant moves to dismiss the Complaint for failure to state a claim upon
20 which relief can be granted. (Mot. 1.) Alternatively, Defendant argues that Plaintiffs’
21 request for damages is barred because a prior restitution award from the related
22 criminal matter provided compensation for any claimed losses. (Mot. 1.)

23 III. LEGAL STANDARD

24 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal
25 sufficiency of the complaint. *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581
26 (9th Cir. 1983). A court may dismiss a complaint under Rule 12(b)(6) for lack of a
27 cognizable legal theory or insufficient facts pleaded to support an otherwise
28 cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th

1 Cir. 1988). To survive a dismissal motion, a complaint need only satisfy the minimal
2 notice pleading requirements of Rule 8(a)(2)—a short and plain statement of the
3 claim. *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations
4 must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp.*
5 *v. Twombly*, 550 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient
6 factual matter, accepted as true, to state a claim to relief that is plausible on its face.”
7 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

8 Whether a complaint satisfies the plausibility standard is a “context-specific
9 task that requires the reviewing court to draw on its judicial experience and common
10 sense.” *Id.* at 679. A court is generally limited to the pleadings and must construe all
11 “factual allegations set forth in the complaint . . . as true and . . . in the light most
12 favorable” to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir.
13 2001). But a court need not blindly accept conclusory allegations, unwarranted
14 deductions of fact, and unreasonable inferences. *Sprewell v. Golden State Warriors*,
15 266 F.3d 979, 988 (9th Cir. 2001).

16 IV. DISCUSSION

17 As a preliminary matter, Plaintiffs oppose Defendant’s motion, in part, because
18 Defendant failed to meet and confer as required by Local Rule 7-3. (Pls.’ Opp’n to
19 Mot. to Dismiss (“Opp’n”) 2, ECF No. 35.) Local Rule 7-3 requires counsel or parties
20 contemplating motion practice to “contact opposing counsel to discuss thoroughly,
21 preferably in person, the substance of the contemplated motion and any potential
22 resolution.” C.D. Cal. L.R. 7-3. The purpose of Local Rule 7-3 is to attempt to
23 resolve the issues necessitating motion practice. *See id.* It is within the Court’s
24 discretion to refuse to consider a motion based on a party’s noncompliance with Local
25 Rule 7-3. *CarMax Auto Superstores Cal. LLC v. Hernandez*, 94 F. Supp. 3d 1078,
26 1088 (C.D. Cal. 2015). However, failure to comply with Local Rule 7-3 “does not
27 automatically require the denial of a party’s motion.” *Id.*

1 Defendant argues that the parties engaged in a telephonic meet and confer, and
2 therefore, satisfied Local Rule 7-3. (Def.'s Notice of Mot. ("Notice") 2, ECF No. 29;
3 Def.'s Reply in Supp. of Mot. ("Reply") 2, ECF No. 37.) Defendant claims to have
4 "advised [Plaintiffs] that there were issues" in connection to the pleading standard.
5 (Reply 2 n.4.) Apparently, Defendant did not raise any issue related to personal
6 jurisdiction, Jane Doe's participation in this litigation, or the preclusion of civil
7 remedy as a result of the criminal restitution. (Opp'n 2.) A brief phone call during
8 which the parties fail to engage in any type of meaningful discussion is wholly
9 insufficient to satisfy Rule 7-3. Rule 7-3 aims to streamline or avoid motion practice,
10 and as is apparent from the papers, the present motion would have benefitted from the
11 required conference. Although it is within the Court's discretion to deny Defendant's
12 Motion for failure to comply with Local Rule 7-3, it declines to do. However, the
13 parties are cautioned that any further failure to strictly and meaningfully comply with
14 Local Rule 7-3 will result in denial of the motion and/or sanctions.

15 **A. Personal Jurisdiction**

16 Due process requires that personal jurisdiction comport with traditional notions
17 of fair play and substantial justice. *See e.g.*, U.S. Const. amend. XIV; *Int'l Shoe Co. v.*
18 *Washington*, 326 U.S. 310, 316 (1945). A court may exercise personal jurisdiction
19 over a defendant when the defendant is present in the forum state, is domiciled in the
20 forum state, consents to personal jurisdiction, *J. McIntyre Machinery, Ltd. v. Nicastro*,
21 564 U.S. 873, 880, or has minimum contacts with the forum state, *Int'l Shoe Co.*, 326
22 U.S. at 316. "Plaintiffs bear the burden of showing that jurisdiction is proper, but
23 '[w]here, as here, the motion is based on written materials rather than an evidentiary
24 hearing, the plaintiff[s] need only make a prima facie showing of jurisdictional facts.'" *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1066 (9th Cir. 2014) (quoting
25 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004))
26 (alternations in original). Thus, Plaintiffs "need only demonstrate facts that if true
27 would support jurisdiction over the defendant." *Harris Rutsky & Co. Ins. Servs. v.*
28

1 *Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003) (internal quotation marks
2 omitted). “Unless directly contravened,” Plaintiffs’ version of the facts are taken as
3 true. *Id.*

4 Here, Plaintiffs state that Defendant is a resident of California, where he is
5 currently incarcerated, and that, prior to his incarceration, Defendant resided in Los
6 Angeles County, California. (Compl. ¶¶ 6, 8.) Defendant does not contravene
7 Plaintiff’s version of the facts, but objects to personal jurisdiction insofar as Plaintiffs
8 fail to adequately allege personal jurisdiction over Defendant. (Mot. 1.) However,
9 Plaintiffs’ claims regarding Defendant’s residency and current physical presence in
10 California are sufficiently pled for this Court to exercise personal jurisdiction over
11 Defendant.

12 **B. Jane Doe’s Participation**

13 Defendant questions whether Jane Doe is suing in her individual capacity, in
14 addition to Jessy and Solomon, or simply as a next friend. (Mot. 1, 3 n.5.) While
15 Defendant ultimately submitted on this issue after Plaintiffs clarified Jane Doe’s role
16 in the litigation, (Reply 6; Opp’n 11–12.), such clarification was unnecessary as the
17 Complaint is clear as to her representative capacity, (*see generally* Compl.).

18 Generally, minors cannot sue in their own name, however, they may conduct
19 litigation by a next friend. Fed. R. Civ. P. 17(c)(2). Through their Complaint,
20 Plaintiffs state that Jessy is a minor, proceeding by and through his next friend, Jane
21 Doe. (Compl. 1, ¶ 4.) The Complaint further clarifies that Jane Doe is a pseudonym
22 for Jessy’s mother and next friend for purposes of this litigation. (Compl. ¶ 3). Thus,
23 there is no question that Jane Doe’s exclusive role is as next friend to Jessy.

24 **C. Rule 12(b)(6)**

25 Defendant argues that Plaintiffs do not state a claim upon which relief may be
26 granted; therefore, the Complaint should be dismissed pursuant to Rule 12(b)(6).
27 (Mot. 1.) In evaluating a motion to dismiss for insufficient pleadings, courts usually
28 begin an analysis “by taking note of the elements a plaintiff must plead to state a
claim.” *Ashcroft*, 556 U.S. at 662. Here, Plaintiffs must allege facts in their

1 Complaint to plausibly demonstrate that: (1) while minors, Plaintiffs were victims of a
2 violation under 18 U.S.C. § 2252A; (2) Plaintiffs suffered personal injury; and (3) said
3 personal injury was a result of the statutory violation. 18 U.S.C. § 2255(a).

4 Rule 8 “does not require detailed factual allegations, but it [does] demand more
5 than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft*, 556
6 U.S. at 678 (internal quotation marks omitted). Further, “[w]hile legal conclusions
7 can provide the framework of a complaint, they must be supported by factual
8 allegations.” *Id.* at 679. Defendant argues that Plaintiffs do not meet this standard
9 because alleging that they “suffered a personal injury as a result of Defendant’s
10 violation,” is conclusory and “nothing more than a recitation of the elements for a
11 cause of action under 18 U.S.C. § 2255(a).” (Mot. 3–5.) Defendant highlights the
12 excerpts of Plaintiffs’ Complaint that appear conclusory; however, once read within
13 the context of the entire complaint, Plaintiffs’ claim that they “suffered a personal
14 injury as a result of Defendant’s violation” is plausible on its face. (*See generally*
15 *Compl.*; Mot. 3–5.)

16 Through their Complaint, Plaintiffs alleged facts, that when accepted as true,
17 provide that Plaintiffs, while minors, were victims of child pornography in violation
18 of 18 U.S.C. § 2252A. (*See Compl.*) In addition to the information provided about
19 Jessy and Solomon—including their ages, how they were photographed, and how their
20 images were transmitted (*Compl.* ¶¶ 9–10, 12–13)—the plausibility of their
21 victimization is further supported by Defendant’s guilty plea to knowingly possessing
22 Plaintiffs’ images in violation of criminal child pornography statutes. (*Compl.* ¶¶ 20–
23 22.) Additionally, facts in the Complaint provide an account of the personal injury
24 that each Plaintiff suffers, including emotional distress with physical manifestations,
25 interference with normal development and educational progress, past and future
26 expenses for medical and psychological treatment, and loss of enjoyment of life.
27 (*Compl.* ¶¶ 11, 14). Therefore, Plaintiffs’ claim of personal injury as a result of
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1 Defendant's statutory violation is not conclusory but is supported by factual
2 allegations that raise their right to relief above a speculative level.

3 **D. Prior Restitution Award**

4 Defendant relies on *Paroline v. United States*, 572 U.S. 434 (2014), to support
5 his contention that Plaintiffs' request for damages is invalid. (Mot. 1.) Under 18
6 U.S.C. § 2259, district courts are required to award restitution for certain federal
7 criminal offenses, including § 2252A for which Defendant was convicted, (Compl.
8 ¶ 20.) *Paroline* sets forth how restitution should be determined under § 2259 and held
9 that the amount should comport "with the defendant's relative role in the causal
10 process that underlies the victim's general losses." 572 U.S. at 458. Defendant argues
11 the previously awarded restitution compensated Plaintiffs in a manner proportionate to
12 Defendant's role in their claimed losses; therefore, Plaintiffs cannot claim additional
13 damages here. (Mot. 1.)

14 "However, an order of criminal restitution is not equivalent to a judicial
15 determination of civil damages." *Eli Lilly & Co. v. Gitmed*, No. 16-cv-00178-DAD-
16 SAB, 2017 WL 1740132, at *3 (E.D. Cal. May 4, 2017). Criminal restitution under
17 § 2259 is a statutorily-based award for compensation, which recompenses specific
18 losses proximately caused by the criminal offense. *See e.g.*, 18 U.S.C. § 2259; *Eli*
19 *Lilly & Co.*, 2017 WL 1740132, at *3. In contrast, when a suit is brought under
20 § 2255, "the victim does not have to prove the exact amount of damage a specific
21 defendant caused the victim." *United States v. Reynolds*, No. 09-CR-00476-AWI,
22 2011 WL 1897781, at *5 (E.D. Cal. May 18, 2011). As such, the damages available
23 to a plaintiff in a civil lawsuit under § 2255 are "very broad, incorporating many
24 different kinds of compensation for an injury or loss." *Eli Lilly & Co.*, 2017 WL
25 1740132, at *3 (internal quotation marks omitted). For example, a plaintiff may be
26 able to recover non-pecuniary damages, such as pain and suffering or mental and
27 emotional distress, that are not available in a restitution proceeding under § 2259. *See*
28 *e.g.*, 18 U.S.C. § 2255; *Doe v. Hesketh*, 828 F.2d 159, 170 (3rd Cir. 2016); *United*

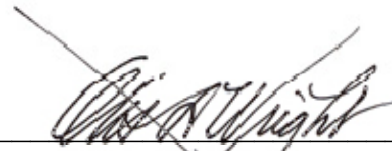
1 *States v. Rothenberg*, 923 F.3d 1309, 1339 (11th Cir. 2019). Therefore, the restitution
2 previously awarded to Plaintiffs in the related criminal matter does not bar Plaintiffs'
3 claim for damages here.

4 **V. CONCLUSION**

5 For the reasons discussed above, the Court **DENIES** Defendant's Motion to
6 Dismiss Plaintiffs' Complaint.

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8 **IT IS SO ORDERED.**

9
10 July 25, 2019

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13 **OTIS D. WRIGHT, II**
14 **UNITED STATES DISTRICT JUDGE**